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May 15, 2019

VIA EMAIL AND PERSONAL SERVICE
Mr. Paul TenHaken
Mayor, City of Sioux Falls
224 West 9th Street
Sioux Falls, SD 57104

Re: Claims of Village River Group, LLC

Dear Mayor TenHaken:

Pursuant to SDCL 3-21-2, notice is hereby given to the City of Sioux Falls ("City") of the claims by Village River Group, LLC ("VRG"), arising out of the wrongful termination of the Development Agreement and Ground Lease between the City and VRG dated December 29, 2017 ("Agreement"). Because these claims for breach of contract may be brought against the City, SDCL 3-21-3(2) requires that this notice be sent to you as the Mayor. The breach of contract by the City includes the breach of the covenant of good faith and fair dealing implicit in the Agreement. If the City persists in its termination of the Agreement, VRG will be damaged in amounts not yet ascertainable by VRG. VRG's claims include without limitation:

The Agreement was wrongfully terminated because VRG was not in default. The May 14, 2019 Notice of Termination claims VRG "failed to . . . undertake Phase I of the Private Improvements at the time Journey was prepared to begin Phase I of the Private Improvements." There was no specified date in the Development Schedule. The meaning of the word "undertake" is not defined. If it meant "commence construction" it should have clearly stated as such.

The May 14, 2019 Notice of Termination claims VRG failed "to observe and perform the conditions set forth in Article V." The Agreement only requires that this happen "prior to the commencement of Phase I of the Private Improvements." Phase I has not been commenced.

The May 14, 2019 Notice of Termination claims VRG "failed to observe and perform its ARTICLE XVI(F) warranty." This Article only requires that "Developer shall have sufficient capital to perform all of its obligations . . . when it needs to have such capital."

These were all very questionable grounds for declaring a default when they were first made, and remain so. VRG does not believe that it is in default, but if there was a default, the "cure" provisions go beyond the thirty-day period if efforts to cure "commence … within thirty (30) days of the date of said notice and (are) diligently pursue(d) to completion." VRG was within the cure

period and at least has been making diligent efforts in that direction, as it has timely responded to various requests by the City.

The City is in violation of ARTICLE VI A.4. of the Agreement, which also sets forth the "review and approval" process by referencing the provisions of ARTICLE VI A.2. of the Agreement, which clearly provide in part as follows:

> *If the City rejects (a change in scope) in whole or in part, the City shall provide a written notice explaining such rejection, and Developer shall submit new or corrected plans, specifications and elevations meeting said objections within thirty (30) days of said notice. These provisions of this Subparagraph relating to approval, rejection and resubmission of corrected plans shall continue to apply until said plans, specification and elevations have been approved by the City.*

The City has not provided written notice explaining a rejection of the proposed change of scope. Therefore, VRG has not been given an opportunity to submit new or corrected plans, specifications, and elevations meeting City objections.

Contrary to the claim in the May 14, 2019 Notice of Termination, there has been no material breach of the Agreement, and certainly no "breach so substantial as to defeat the very object of the contract." VRG remains ready, willing and able to work out all existing differences between the City and VRG.

Thank you.

Very truly yours,

HAGEN, WILKA & ARCHER, LLP

Thomas K. Wilka

TKW:ldm
cc: Jeff Lamont (email)
D. Charles McDonald (email)
Stacy F. Kooistra (email)